Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

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September 29, 1997

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REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association ("USTA") respectfully submits this reply in response to comments filed in the Further Notice of Proposed Rulemaking issued in the above-referenced docket.[1] USTA is the principal trade association of the local exchange carrier ("LEC") industry, with over 1,000 members.

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[1] Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, In the Matter of Implementation of the Subscriber carrier Selection Changes provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, FCC 97-248, released July 15, 1997 ("Further Notice").

I. The Commission Must Recognize That Incumbency Is Not Attributable Solely To ILECs In This Proceeding.

A. All Authorized Carriers Offering Bundled Services Are Able To Act As Both An Executing And Submitting Carrier.

As expected, a number of commenters in this proceeding repeat their mantra that incumbent LECs ("ILECs") possess bottleneck facilities and should therefore be regulated more stringently than themselves. This mantra is repeated regardless of whether it is relevant to the matter at hand. This is a case where the alleged presence of bottleneck facilities has no bearing on the matter at hand: the protection of consumers from unauthorized changes in carrier selection. The anti-competitive concerns related to incumbency[2] arise when a carrier provides more than one type of calling service, i.e. some combination of local, intraLATA toll, and interexchange service, thereby allowing it to act as both an executing and submitting carrier. Incumbency in this proceeding is determined by the simple fact of being the authorized carrier of a customer, and offering bundled service. It is not related to ownership of the physical networks. As such, every authorized carrier offering bundled service is an incumbent.

Because every authorized carrier offering bundled service is an incumbent with respect to this matter, any Commission safeguards adopted to protect against unauthorized carrier changes ("slamming") must apply equally and not single out ILECs for separate treatment. USTA is not

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[2] Further Notice at ¶15. "We also seek comment on whether LECs serving as both submitting carrier and executing carrier for changes in telecommunications service, whether offering interexchange and local exchange service or just local exchange service, have an enhanced ability or incentive to make unauthorized PC changes on their own behalf without detection, and thus should be limited to verification by an independent, third-party." (footnotes omitted) Incumbency in these instances is not limited to incumbent LECs.

alone in pointing out that the traditional concept of incumbency does not apply here. At least one consumer protection board and two state commissions properly recognize that ILECs do not possess any anti-competitive advantages over other incumbent authorized carriers.[3]

Accordingly, the Commission should reject suggestions by other parties that would subject only ILECs to more stringent requirements than other incumbent authorized carriers. Some of these suggestions include: quarterly reporting of PC-change performance intervals and error ratios;[4] verification of in-bound PC switch calls;[5] third party verification for ILECs;[6] and, unreasonably short time limits in which to effect PC switch requests.[7] These regulatory burdens would discriminate against ILECs and would ultimately have the effect of hurting competition.

B. Submitting Carriers Must Be Held Just As Responsible For Submitting Correct Information As Executing Carriers Must Be For Properly Acting On That Information.

USTA would note that PC switching is a bilateral process. It does not depend exclusively on the actions of the incumbent authorized carrier. For instance, CompTel urges the Commission

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[3] See, Comments of New York Consumer Protection Board at p. 20, New York Department of Public Service at p. 5, and Virginia State Corporation Commission at p. 5 (all filed September 15, 1997).

[4] See, e.g., Comments of Competitive Telecommunications Association ("CompTel") at p. 6. See, also, Comments of Intermedia Communications at p. 4 (both filed September 15, 1997).

[5] See, Comments of CompTel at p. 10.

[6] See, Comments of MCI at p. 8 (filed September 15, 1997).

[7] Id. at p. 24. See, also, Comments of Excel Communications at p. 5 (both filed September 15, 1997).

to "require parity between incumbent LECs (and their affiliates) and competitors in PC-change intervals and error ratios."[8] CompTel also urges the Commission to "adopt a rule that would make an executing carrier [ILEC, specifically] liable to the submitting carrier for failure to properly process and execute a PC-change request."[9] The ability of ILECs and any other incumbent authorized carrier to properly effect PC switches depends in large part on the accuracy of the information submitted to it. Executing carriers should not be expected to examine and verify submitted PC switch requests. Not only would doing so require considerable expenditure of resources, it would also expose executing carriers to spurious charges of anti-competitive behavior. Submitting carriers must be held just as responsible for submitting correct information as executing carriers must be for properly acting on that information. Again, ILECs must not be held to more stringent standards than other incumbent authorized carriers.

C. The Commission Should Reject Mandatory Third-Party Verification Because The Ability Of One Carrier To Apply It Does Not Hold Across All Other Carriers.

On the matter of third-party verification, MCI makes the statement that the cost of third-party verification "is not a serious concern with respect to the RBOCs and other large LECs that have the benefits of economies of scale and scope at least as strong as MCI."[10] MCI adopted third-party verification as part of a voluntary consent decree. Whether MCI would have adopted

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[8] See, Comments of CompTel at p. 6.

[9] Id., at p. 14.

[10] See, Comments of MCI at p. 9, footnote 11.

third-party verification absent the consent decree is an open question. For MCI to then, in turn, urge the Commission to mandate for everyone an action voluntarily entered into by itself raises the obvious question of why MCI would even care how other submitting carriers verify PC switch requests. That MCI may feel that third-party verification is more reliable is irrelevant.[11] The ability of other carriers to utilize other verification procedures does not expose MCI to any liability these carriers may accrue as a result of using what MCI deems to be less reliable verification procedures.

Furthermore, Bell Operating Company ("BOC") interLATA affiliates are required to be structurally separate from the local exchange operations, so they do not share any economies of scale or scope. Furthermore, the Commission has found that BOC interLATA affiliates and all independent ILEC interexchange affiliates lack market power.[12] Accordingly, no ILEC has economies of scale and scope in the provision of interexchange service anywhere near approaching that of MCI. Contrary to MCI's assertion, the cost of third-party verification is a very serious concern to ILECs. The Commission should reject mandatory third-party

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[11] MCI's suggestion to mandate third-party verification is particularly disingenuous when coupled with MCI's separate suggestion that PC changes using third-party verification should be deemed to automatically override any PC freeze in effect (Comments of MCI at p. 18). MCI's true purpose in advocating mandatory third-party verification is to hobble its far smaller competitors with the same costs it was forced to accept in its consent decree while simultaneously eviscerating the protection against slamming that PC freezes provide to consumers.

[12] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order and Third Report and Order, CC Docket Nos. 96-149, 96-61, FCC 97-142 (released April 18, 1997) (Classification of LEC Long Distance Service Report and Order).

verification.[13]

II. The Commission Should Not Adopt Any Rules That Though Intended To Protect Against The Anti-Competitive Use Of PC Freezes, Deny Consumers The Ability To Protect Themselves Against Unauthorized PC Changes.

A number of commenting parties attempt to paint PC freeze services as inherently anti-competitive barriers. In their zeal, some parties suggest the Commission adopt rules that would either eviscerate or eliminate entirely what has been acknowledged to be an effective consumer-controlled tool in combating slamming. Cable & Wireless goes so far as to advocate a complete and total prohibition on ILECs from providing PC freeze service.[14] Brittan Communications International ("BCI") suggests that the rules should be modified to permit anyone to cancel a PC freeze without having to notify the executing carrier that originally enacted the freeze at the consumer's request.[15] To combat the obvious slamming loophole this opens up, BCI proposes to further complicate matters by requiring third-party verification.[16] It would be incongruous for the Commission to adopt rules that would eliminate consumer control over their choice of

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[13] For similar reasons, the Commission should reject suggestions to establish a single nationwide, third-party verifier. (See, Comments of MCI at p. 25, and Comments of American Carriers Telecommunications Association at p. 19.) Such a system raises too many unanswered questions about how an entity might be funded and the limits of its authority.

[14] See, Comments of Cable & Wireless at p. 3 (filed September 15, 1997).

[15] See, Comments of Brittan Communications International at p. 10 (filed September 15, 1997).

[16] See, also, *supra* MCI reference at footnote 11.

telecommunications carrier at a time when the problem of unauthorized PC changes is growing worse.

Another suggestion urged by various parties is for the Commission to adopt a temporary prohibition against ILECs offering PC freeze service for local and intraLATA toll services when those markets become open to active competition.[17] None of these parties explain why consumers in these service markets should be deprived of an option that they already possess (and indeed may already be exercising) with respect to interexchange service. These parties claim that such a prohibition is necessary in order to prevent ILECs from aggressively using PC freezes to forestall competition.

Instead of depriving consumers of a valuable tool against slamming based on the mere allegation of anti-competitive behavior, a more appropriate response by the Commission would be to simply ensure that ILECs fully inform their customers in neutral language about what a PC freeze does and what action is necessary on their part to change carriers once a PC freeze is enacted. A fully informed customer, free to make his own decisions about carrier selections without worrying that his selection will be abrogated by slamming should be one of the ultimate goals of the Commission in this proceeding.

USTA would also note that the same parties which tell the Commission to prohibit PC freeze service for local and intraLATA toll service because ILECs will anti-competitively market PC freezes to forestall competition, simultaneously tell the Commission that ILECs should

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[17] See, Comments of AT&T at p. 20, Comments of CompTel at p. 8, and Comments of MCI at p. 11 (all filed September 15, 1997).

provide them with the names and numbers of all customers who have enacted any level of PC freeze.[18] As USTA has previously stated,[19] providing such information without first obtaining the consent of those customers clearly violates their privacy rights. Both out-bound and in-bound marketing can easily be modified to determine whether a customer has a freeze in place and thereafter make subsequent accommodations. Suggestions that mandate the abrogation of customer privacy rights in the name of telemarketing are not consonant with the intent of Section 258 or this proceeding.

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[18] See, Comments of AT&T at p. 20, and Comments of CompTel at p. 9.

[19] See, Comments of USTA at p. 3 (filed June 4, 1997) in response to MCI Petition for Rulemaking RM 9085 (filed March 18, 1997).

CONCLUSION

For these and the above-stated reasons, USTA urges the Commission to recognize that incumbency is not attributable solely to ILECs in this proceeding. Rather, all authorized carriers offering bundled services and able to act as both an executing and submitting carrier are incumbents. As such, any rules adopted by the Commission cannot single out ILECs for treatment separate from that applied to other carriers. Furthermore, the Commission should not adopt any rules that though intended to protect against the anti-competitive use of PC freezes, deny consumers the ability to protect themselves against unauthorized PC changes.

Respectfully submitted,

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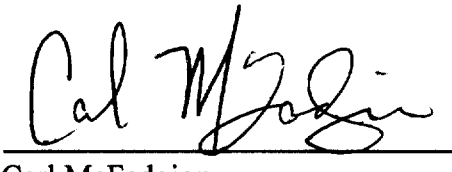
CERTIFICATE OF SERVICE

I, Carl McFadgion, do certify that on September 29, 1997 copies of the Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the person on the attached service list.



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